IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8621 OF 2007

Jayalaxmi Kantilal ...Petitioners

Versus

Kamleshsingh H.Chowhan

and anr. ....Respondents

Mr.Zubin Behram Kamdin for the petitioner.

Mr.Kantawala i/by.Kantawala & Co. for respondents.

CORAM: S.C.DHARMADHIKARI, J.

5th December, 2007.

P.C. :

1. Rule.

2. Heard learned counsel for the parties.

3. By consent, Rule made returnable forthwith.

4. This Writ petition is directed against an order passed by the Trial court refusing to take the Written

Statement of the petitioner/defendant on record.

5. I have perused the present petition and the Annexures thereto with the assistance of Mr.Behram Kamdin and Mr.Kantawala.

6. The application for condoning the delay in filing the Written Statement states that the petitioner is a widow and is 82 years of age. This is an eviction suit filed against her by the respondents before me on 7.3.2007. The writ of summons was served on 9.4.2007. There was 88 days delay in filing the Written statement which, if added period is taken into account, gets reduced to about 58 days.

7. The petitioner pointed out that there was a marriage in the family and also for visiting her ailing sister, she was travelling and had been to Rajkot in Gujarat. In such circumstances, and on account of the fact that there was a communication gap between her and her advocate that immediate steps could not be taken by her to file the written statement. The written statement was ready and affirmed on 6.7.2007.

8. The application was opposed by the respondent and apart from the fact that the allegation is that the application lacks bonafide reliance was placed on a decision of the Hon'ble Supreme Court and this court.

9. The application was then placed before the concerned Judge and in the impugned order the Learned Judge has observed that the petitioner defendant has not sought extension of time within 30 days for filing written statement. The present application is filed beyond 90 days. If the petitioner sought extension of time for filing Written Statement upto 90 days then the situation is different. Therefore, the application for extension of time for filing written statement is therefore incapable of being entertained is the finding of the learned Judge. Further, the petitioner has not set out exceptional circumstances for condoning the delay in filing Written Statement. The entire reasoning from para 14 onwards demonstrates that the Learned Judge is unaware of the basic principles. The term 'exceptional circumstances' is something not even stated in the provisions. If Order 8 Rule 1 is perused

the phraseology therein is clear. The Learned Judge has not referred to the same. The Written statement has to be filed within 30 days of the date of service of summons on the defendant. The Proviso states that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day, as may be specified by the court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons. The Learned Judge has used the term ‘exceptional circumstances’ on account of the same appearing in the decision of this court and the Hon’ble Supreme court. Exceptional circumstances should be for the learned Judge to exercise his discretionary power.

10. The non-production of the wedding invitation card does not mean that the entire version of the petitioner is false and not capable of being believed. Thus the reasons set out mean "exceptional circumstances" but the Learned Judge discards them because of want of absolute proof. In my view a hypertechnical approach

in such matters is likely to defeat justice. It is not something unusual. There have been delays in filing written Statement and they have been condoned also by the Hon'ble Supreme Court. However, the observations of the Learned Judge that such applications have to be made within some time frame are not accurate interpretation of the legal provisions.

11. The pleas now raised by Mr.Kantawala to support the impugned order are essentially based on the fact that the petitioner in the writ petition has set out additional reasons, which cannot in his submission, be relied upon. It is not necessary to go into this issue because on the available material the delay should have been condoned.

12. As a result of the above discussion, the impugned order is quashed and set aside. Rule is made absolute. The application made by the petitioner is allowed, subject, however to the petitioner paying costs quantified at Rs.5000/- to be paid within a period of two weeks from today. If the costs are paid and proof is produced the trial court to accept the

Written Statement and thereafter proceed with the suit on merits and in accordance with law. Considering the advanced age of the petitioner, the Trial court to expedite the hearing of the suit and endeavour and dispose off the same as expeditiously as possible and before 31.12.2008.

sd/-

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